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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/190,309
Filing Date: November 12, 1998
Appellant(s): SCHNEIDEWEND ET AL.

_____
Brian J. Dorini
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/30/2010 appealing from the Office action

mailed 12/30/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any <u>current</u> related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The Examiner notes that the instant application has been previously affirmed by the BPAI based on the Appeal Brief filed 12/26/2006.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-19 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of

rejection to be reviewed on appeal.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in

the Appendix to the appellant's brief.

(8) Evidence Relied Upon

Young et al. (U.S. Patent No. 5,479,268) published December 26, 1995

Schein et al. (U.S. Patent No. 5,801,787) published September 1, 1998

Marsh et al. (U.S. Patent No. 6,208,799) published March 27, 2001

Roop et al. (U.S. Patent No. 6,619,274) published April 8, 1997

Program and System Information protocol for Terrestrial Broadcast and Cable

Specification published December 23, 1997

Landis et al. (U.S. Patent No. 5,561,461) published October 1, 1996

Usui et al. (U.S. Patent No. 5,808,694) published September 15, 1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-6, 10-11, 13-17 are rejected under 35 U.S.C. 102(b) as being

clearly anticipated by Young et al. (U.S. Patent No. 5,479,268).

Referring to claim 1, Young discloses a processor (**see Figures 22A and 22B**

and Column 12, Lines 38-52) for providing an EPG (**see Figure 1**), wherein the

television receiver includes a processor (**see CPU 228 in Figure 22A**) and stores a

program schedule (**see Column 12, Lines 64-67**), the EPG operable by a user to select

a first program and a second program (**see Figure 1**) received from corresponding

program sources (**see Figure 1 for the first program NEWS coming from**

channel/source CNN and the second program Jane Wallace coming from

channel/source LIF (Lifetime channel)) and to select a first program processing

function for the first program and to select a second program processing function for the

second program (**see Figure 2 and Column 5, Lines 37-38 and Column 7, Lines 24-**

30 for selecting programs to be recorded).

Young also discloses a tuner (**see tuner 202 in Figure 22A**) operable by the

processor to receive for the first program, first current time reference information from a

first corresponding program source (**see Column 12, Lines 58-61 for receiving EPG**

information and Figure 1 for the EPG information containing programs, which are

displayed for a specific time period (*for example see Figure 1 for Lunch Box being broadcast at 12:00 PM*) from a particular programming source (*see Figure 1 for channel CNN, which is a broadcast source*)), wherein the first current time reference information provides information for synchronizing a scheduling clock with a clock of the first corresponding program source (**see Column 12, Line 58 through Column 13, Line 24 for using the incoming EPG information (***which includes current time reference information for each program from each program (<u>channel</u>) source***)) to synchronize the scheduling clock (clock used to determine when to trigger a recording event**) with a clock of the first corresponding program source **(the time in the EPG data used to determine what time and channel to start the recording function))**.

Young also discloses that the tuner operable by the processor also receives for the second program, second current time reference information from a second corresponding program source (**see again Column 12, Lines 58-61 and Figure 1 Jane Wallace being broadcast from source LIF at 11:00 AM**), wherein the second current time reference information provides information for synchronizing a scheduling clock with a clock of the first corresponding program source (**see Column 12, Line 58 through Column 13, Line 24 for using the incoming EPG information (***which includes current time reference information for each program from each program (<u>channel</u>) source***)) to synchronize the scheduling clock (clock used to determine when to trigger a recording event**) with a clock of the first corresponding program source (**the time in the EPG data used to determine what time and channel to start**

the recording function). *Further note Figure 4, which shows that multiple*
programs on multiple channels can be scheduled for recording, therefore a first
and second program with two different clocks from two different sources can
provide information for synchronizing a scheduling clock.

Young also discloses that the processor is programmed to synchronize the
current time of day of a first scheduling clock with the current time of day of the clock of
the first corresponding program source based on the first current time reference
information (**see Column 13, Lines 14-17 for saving the record time in RAM 236 and**
Column 13, Lines 17-22 for executing a record function when both times are
compared and the system determines that the two times matched, therefore
synchronizing a current time of day of a first scheduling clock that is
synchronized with current time of day of the clock of the first program source
(*sent in the EPG data*)).

Young also discloses that the processor is programmed to initiate the first
program processing function based upon the synchronized first scheduling clock (**see**
Column 13, Lines 17-22).

Young also discloses that the processor is programmed to initiate the second
program processing function based upon the second scheduling clock (**see Column 13,**
Lines 17-22).

Young also discloses that the processor is programmed to ensure that the
second scheduling clock is synchronized with the current time of day of the clock of the
second corresponding program source prior to initiation of the second program

processing function by synchronizing the current time of day of the second scheduling

clock with the current time of day of the clock of the second corresponding program

source based on the second current time reference information prior to initiation of the

second program processing function (**Column 13, Lines 3-8 for providing a schedule**

update time/clock 230 update data that represents an updated current time of day

(from a first program source) for when a recording operation will be executed and

Column 13, Lines 17-22 for synchronizing a system clock 230 (current time of day

of a first scheduling clock) with the requested/scheduled time (current time of day

of the clock of the first corresponding program source) in order to execute a

recording operation).   *The Examiner further notes that Young teaches that the*

system is capable of scheduling more than one television program for recording

(see Figure 4) and therefore a first, second or even a third current time of day

clock of a first, second or third programming source, respectively, can be

compared to a system clock or updated system clock 230 in order to execute a

recording/program processing function. Further note that by comparing the two

times/clocks to determine if a recording function should be initiated, the system

inherently does so <u>*prior to initiation of the second program processing function*</u>*,*

as claimed, because the recording function will not be executed if an affirmative

comparison is made. Further note Figure 4, which shows that multiple programs

on multiple channels can be scheduled for recording, therefore a first and second

program with two different clocks from two different sources can provide

information for synchronizing a scheduling clock.

Referring to claims 2, Young discloses that the current time reference information (**the start and end time of a program in the received EPG data (***see the rejection of claim 1***)**) provides a current time-of-day indication (**see again Figure 1 for NEWS starting at 11:00 AM, which is a current time of day (***the time the program is currently being broadcasted***)**).

Referring to claim 4, Young discloses that the first programming processing function is at least one selected from the group consisting of a record function (**see the rejection of claim 1**).

Referring to claim 5, Young discloses that the group of claim 4, further consists program decoding (**see Column 13, Lines 60-61**).

Referring to claim 6, Young discloses that the processor is programmed to terminate the second program processing function based upon the second scheduling clock (**see Column 13, Lines 14-22 for recording a program according to it's start time and length, wherein the length allows the processor to calculate when to stop the recording at the end of the television program**).

Referring to claim 10, see the rejection of claim 2.

Referring to claim 11, see the rejection of claim 1 for providing a scheduling clock, which is a setting to record a television program, which indicates what time and day to record a program.

Referring to claim 13, Young discloses that the tuner is operable to receive the first current time reference information from a first corresponding program source that is a broadcast source (**see Column 12, Lines 58-62**).

Referring to claim 14, Young discloses that the system comprises a central scheduling clock (**see Column 13, Lines 3-24**).

Young also discloses that the processor is programmed to provide the first scheduling clock by updating the central scheduling clock with time information generated based on the first current time reference information (**see Column 13, Lines 14-24**).

Young also discloses that the processor is programmed to provide the second scheduling clock by updating the central scheduling clock with time information generated based on the first current time reference information (**see Column 13, Lines 14-24**).

Referring to claim 15, Young discloses that the processor is programmed to simultaneously maintain, for at least a period of time, both the first and second scheduling clock (**see again Column 13, Lines 13-24 for maintaining the scheduled**

times (***first and second scheduling clock for a first and second program,***

respectively) **until the system clock 230 matches the scheduled program times**

(***transmitted with the EPG information***)).

      Referring to claims 16-17, see the rejection of claims 1-2.

Claim Rejections - 35 USC § 103

      The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

      Claims 1 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Marsh et al. (U.S. Patent No. 6,208,799) in view of Schein et al. (U.S. Patent No.

5,801,787).

      Referring to claim 1, Marsh discloses a processor for providing an electronic

program guide (**EPG**), the EPG operable by a user (1) to select a first program and a

second program received from corresponding program sources and (2) to select a first

program processing function for the first program and (3) to select a second program

processing function for the second program (**see processor 25 in set-top box 11 in**

Figure 2 and Column 1, Lines 20-30 for the set-top box enabling a user to select

multiple programs for recording through an EPG).

Marsh also discloses a tuner operable by the processor to receive (2) for the first program, first current time reference information from a first corresponding program source, wherein the first current time reference information provides information for synchronizing a scheduling clock with a clock of the first corresponding program source, and (2) for the second program, second current time reference information from a second corresponding program source, wherein the second current time reference information provides information for synchronizing a scheduling clock with a clock of the first corresponding program source (**see Column 1, Line 20 through Column 2, Line 14 for receiving first and second current time reference information (*IPG information*) from a single server or headend (*see Figure 1*)**).

Marsh also discloses that the processor is programmed to synchronize the current time of day of a first scheduling clock with the current time of day of the clock of the first corresponding program source based on the first current time reference information (**see Column 10, Lines 36-55 and Figure 7**).

Marsh also discloses that the processor is programmed to initiate the first program processing function based upon the synchronized first scheduling clock (**see Column 10, Lines 56-60 and Figure 7**).

Marsh also discloses that the processor programmed to initiate the second program processing function based upon a second scheduling clock (**see Column 10, Lines 36-55 and Figure 7**).

Marsh also discloses that the processor is programmed to ensure that the second scheduling clock is synchronized with the current time of day of the clock of the

first corresponding program source prior to initiation of the second program processing

function by synchronizing the current time of day of the second scheduling clock with

the current time of day of the clock of the first corresponding program source based on

the second current time reference information prior to initiation of the second program

processing function (**see Column 10, Lines 56-60 and Figure 7**).

Marsh fails to teach receiving a clock of a second corresponding program source.

Schein teaches receiving current time/clock/EPG data from first and second

programming sources (**see Column 4, Lines 25-63**), and using the EPG data to

schedule program recordings (**see Column 6, Lines 40-44**).

At the time the invention was made, it would have been obvious to a person of

ordinary skill in the art, to modify the recording system, as taught by Marsh, to receive

EPG/clock/current time data from multiple programming sources, as taught by Schein,

for the purpose of allowing a user to easily select shows (**transmitted from multiple

television program sources**) for viewing or recordation (**see Column 1, Lines 64-65

of Schein**).

Referring to claim 16, see the rejection of claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Young et al. (U.S. Patent No. 5,479,268) in view of Roop et al. (U.S. Patent No.

5,619,274).

Referring to claim 3, Young discloses that the system further comprises a display

for displaying a current time-of-day to a user (**see the current time 11:25A being**

displayed to a user in Figure 1)

Young fails to disclose that the processor is operable to provide an output for

updating the display of the current time-of-day based upon the first current time

reference information and a filter for filtering the output to inhibit a discontinuous change

in the current time reference information from causing a discontinuous change in the

display of the current time-of-day and for providing the filtered output to the display.

Roop discloses a filter for filtering said output such that any discontinuity in the

current time reference information is prevented and displaying the updated time to the

user (**see the Daylight Savings Time Change Command in Column 39 and note**

that automatically changing the current time according to the corrected Daylight

Savings time prevents any possible discontinuity), and providing said filtered output

to said display **(see Column 40, Lines 19-22)**.

At the time the invention was made, it would have been obvious to a person of

ordinary skill in the art, to modify EPG data receiving system, as taught by Young, to

include the daylight savings data, as taught by Roop, for the purpose of displaying

schedule data for time periods that contain the correct adjusted local time (**see Column 40, Lines 21-22 of Roop**).

Referring to claim 18, see the rejection of claim 3.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. Patent No. 5,479,268) in view of the Program and System Information Protocol for Terrestrial Broadcast and Cable document (herein referred to as the ATSC document) in further view of Landis et al. (U.S. Patent No. 5,561,461).

Referring to claim 7, Young discloses that the tuner is operable to receive EPG data from various types of means and further notes that "*Other means of delivering schedule information can be employed, including the use of a subcarrier channel on the cable service*", however, Young fails to teach that the tuner receives STT data that includes a time reference indicator and associated correction data sufficient to establish a time of transmission of a program by a corresponding broadcast source accurate to within about plus or minus 4 seconds.

The ATSC document teaches that a current time reference information comprises a System Time Table (**SST**) data of an MPEG compliant data stream (**see Pages 1 and 11-12**), and wherein said stored program schedule is derived from an Event Information Table (**EIT**) of an MPEG compliant data stream (**see Pages 1 and 11-12**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the data transmitted from the servers in packetized form, as taught by Roop, to adhere to the MPEG standard with STT and EIT tables, for the purpose of providing a collection of hierarchically arranged tables for describing system information and program guide data (**see Page 11, Lines 1-2 of the ATSC document**).

Young and the ATSC document fail to teach that the time of transmission is correct to within about plus or minus 4 seconds.

Landis also discloses a television receiver that is capable of receiving a time correction command, which is accurate to within seconds, therefore teaching accurate to within about plus or minus 4 seconds (**see Column 3, Lines 1-7**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the television receiver, as taught by Roop and the ATSC document, using the enhanced television receiver that receives a time correction command, as taught by Landis, for the purpose of maintaining accurate time (**see Column 6, Lines 6-8 of Landis**).

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. Patent No. 5,479,268) in view of the Program and System Information Protocol for Terrestrial Broadcast and Cable document (herein referred to as the ATSC document).

Referring to claim 12, Young discloses that the tuner is operable to receive EPG data from various types of means and further notes that "*Other means of delivering schedule information can be employed, including the use of a subcarrier channel on the cable service*", however, Young fails to teach that the first and second current time reference information comprises STT data of an MPEG compliant data stream, and the stored program schedule is derived from an EIT of an MPEG compliant data stream.

The ATSC document teaches that a current time reference information comprises a System Time Table (**SST**) data of an MPEG compliant data stream (**see Pages 1 and 11-12**), and wherein said stored program schedule is derived from an Event Information Table (**EIT**) of an MPEG compliant data stream (**see Pages 1 and 11-12**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the data transmitted to the television receivers, as taught by Young, to adhere to the MPEG standard with STT and EIT tables, for the purpose of providing a collection of hierarchically arranged tables for describing system information and program guide data (**see Page 11, Lines 1-2 of the ATSC document**).

Claims 8-9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. Patent No. 5,479,268) in view of Usui et al. (U.S. Patent No. 5,808,694).

Referring to claim 8, Young discloses that the tuner is operable to receive first current time reference information that is based on a first time-of-day clock, and that the tuner is operable to receive second current time reference information, however, Young is silent as to receiving EPG information (**second current time reference information**) based on a second time-of-day clock, with the second time-of-day clock being unsynchronized with the first time-of-day clock.

Usui teaches receiving first and second current time reference information (**EPG information**) from two separate sources (**see Column 17, Lines 8-22 and Figure 22**). Further note that Usui teaches that in the U.S.A. that time information is included in the EPG information (**see Column 5, Lines 45-51 and Column 17, Line 60 through Column 18, Line 5**), therefore the first and second current time reference information (**EPG information transmitted from separate source**) are clearly based on a first and second time-of-day clock, wherein the clocks are inherently unsynchronized because they are transmitted from two distinct sources/locations.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the television receiver, as taught by Young, using the multiple EPG receiver functionality, as taught by Usui, for the purpose of allowing operability to be improved and a desired program to be selected in a short time and at a high degree of reliability (**see Column 18, Lines 18-20 of Usui**).

Referring to claim 9, see the rejection of claim 8.

Referring to claim 19, see the rejection of claim 8.

 (10) Response to Argument

B.   **Whether Claims 1-2, 4-6, 10-11 and 13-17 are Anticipated by U.S. Patent No.**

        5,479,268 to Young et al.

        B1.   **Claims 1-2, 4-6, 10-11 and 13-17**

        Applicant argues that the Examiner seems to have an inaccurate understanding

of the meaning o the word "synchronize". Applicant notes that the definition of

"synchronize" is "***to cause to indicate the same time, as one timepiece with***

another" and that in other words, synchronizing a clock with a particular time means

setting or changing the clock to that time. Applicant further notes that the Examiner has

interpreted "synchronize" to include a mere comparison of clocks (i.e. determining

whether the two clocks have the same time at the moment). However, such a

comparison cannot be interpreted to mean causing the compared clock to indicate the

same time. The Examiner respectfully disagrees.

        The Examiner notes that the entire definition has been considered and that

Young and Marsh both teach synchronization by the process of setting a time for

recording and comparing the two times/clocks until the same time is realized and the

recording/processing function is executed (**see Column 13, Lines 17-22 for the**

system clock 230 running/changing until a matched schedule time is

synchronized to the system clock 230). Note that when a system clock 230 matches

a scheduled time for recording, synchronization occurs that allows the VCR to start

recording the television program previously selected by the viewer. Marsh teaches the

same comparison/synchronization at Column 10, Lines 35-60.

Applicant also argues that Young does not describe changing the system clock

prior to initiation of the processing function. Applicant also notes that the Examiner has

previously stated that Young is not required to teach changing the system clock prior to

initiation of the processing function. This was stated based on the term "synchronize"

not stating "changing" or "setting" in the definition presented by Applicant. Regardless

of whether the term "synchronize" implies "changing" or "setting" the system clock,

Young teaches functionality that allows the television system to send last minute

schedule change data, which updates the times of television programs in the case

where a television program such as a baseball game runs longer than anticipated.

Therefore, while Young is only required "*to cause to indicate the same time*", not

changing or setting, Young still teaches changing the system clock prior to initiation of

the processing function (**recording**).

C.   **Whether Claims 1 and 16 are Unpatentable under 35 U.S.C. § 103(a) over**

         U.S. Patent No. 6,208,799 to Marsh et al. in view of U.S. Patent No. 5,801,787

to Schein et al.

C1.   Claims 1 and 16

Applicant argues the same issues stated above in regards to the Marsh and

Schein references. The Examiner notes that the same rebuttal applies to the Marsh

reference, wherein Young and Marsh both teach synchronization by the process of

setting a time for recording and comparing the two times/clocks until the same time is

realized and the recording/processing function is executed (**see Column 13, Lines 17-**

22 for the system clock 230 running/changing until a matched schedule time is

synchronized to the system clock 230). Note that when a system clock 230 matches

a scheduled time for recording, synchronization occurs that allows the VCR to start

recording the television program previously selected by the viewer. Marsh teaches the

same comparison/synchronization at Column 10, Lines 35-60.

The Examiner further notes that Schein is applied only to teach multiple

programming sources and that Marsh is applied to teach the synchronization process as

described above.

D.   Whether Claims 3 and 18 are Unpatentable under 35 U.S.C. § 103(a) over

U.S. Patent No. 5,479,268 to Young et al. in view of U.S. Patent No.

5,619,274 to Roop et al.

D1.   Claims 3 and 18

In regards to Applicant argues regarding the synchronization and changing the system clock prior to initiation of the processing function, see the Examiner's rebuttal above.

Applicant also argues that Roop fails to teach filtering the output to inhibit a discontinuous change in the current time reference information from causing a discontinuous change in the display of the current time-of-day, or for providing such filtered output for display. The Examiner respectfully disagrees.

In regards to claims 3 and 18, Applicant argues that Roop fails to teach preventing a discontinuity and notes that changing a time for daylight savings causes a time discontinuity and does not prevent a time discontinuity. While the concept of changing daylight savings time may cause a time discontinuity on a global scale, in view of the Young and Roop references as a whole, if daylight savings is not compensated for while broadcasting stations have compensated for daylight savings time, a time discontinuity is introduced. Therefore, by Roop indicating such a discontinuity and correcting the discontinuity within the United States, all programs broadcasted after daylight savings will be recorded at the proper times, therefore a discontinuity is prevented. The Examiner notes that this is consistent with Applicant's specification,

which teaches correcting a time discontinuity by providing a daylight saving time

indicator, as described on Page 12 of Applicant's specification.

E.   Whether Claim 7 is Unpatentable under 35 U.S.C. § 103(a) over U.S. Patent

No. 5,479,268 to Young et al. in view of Program and System Information

Protocol for Terrestrial Broadcast and Cable and further in view of U.S.

Patent No. 5,561,461 to Landis et al.

E1.   Claim 7

In regards to Applicant argues regarding the synchronization and changing the

system clock prior to initiation of the processing function, see the Examiner's rebuttal

above.

F.   Whether Claim 12 is Unpatentable under 35 U.S.C. § 103(a) over U.S. Patent

No. 5,479,268 to Young et al. in view of Program and System Information

Protocol for Terrestrial Broadcast and Cable

F1.   Claim 12

In regards to Applicant argues regarding the synchronization and changing the system clock prior to initiation of the processing function, see the Examiner's rebuttal above.

G.   Whether Claims 8-9 and 19 is Unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,479,268 to Young et al. in view of U.S. Patent No. 5,808,694 to Usui et al.

G1.   Claims 8-9 and 19

In regards to Applicant argues regarding the synchronization and changing the system clock prior to initiation of the processing function, see the Examiner's rebuttal above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

/Jason P Salce/

Primary Examiner, Art Unit 2421

June 17, 2010

Conferees:

Scott Beliveau

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